

8/8/2016 3:23:45 PM

Chris Daniel - District Clerk Harris County
 Envelope No. 12050075
 By: MELISSA TORRES
 Filed: 8/8/2016 3:23:45 PM

CAUSE NO. 201643681

RECEIPT NO. *********

0.00 CIV

TR # 73261722

PLAINTIFF: ELIZONDO, RUBEN
 VS.
 DEFENDANT: TRAVELERS INSURANCE AGENCY INC

In The 125th
 Judicial District Court
 of Harris County, Texas
 125TH DISTRICT COURT
 Houston, TX

CITATION

THE STATE OF TEXAS
 County of Harris

TO: TRAVELERS INSURANCE AGENCY INC BY SERVING ITS REGISTERED AGENT
 CT CORPORATION SYSTEM
 OR WHEREVER THEY MAY BE FOUND
 1999 BRYAN STREET SUITE 900 DALLAS TX 75201
 Attached is a copy of PLAINTIFF'S ORIGINAL PETITION JURY DEMAND AND REQUEST FOR DISCLOSURE

This instrument was filed on the 28th day of June, 2016, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 28th day of June, 2016, under my hand and seal of said Court.

Issued at request of:
 WEYLER, MARK A.
 4545 BISSONNET 294
 BELLAIRE, TX 77401
 Tel: (713) 668-4545
 Bar No.: 21237300



Chris Daniel

CHRIS DANIEL, District Clerk
 Harris County, Texas
 201 Caroline, Houston, Texas 77002
 (P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//10420891

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock _____.M., on the _____ day of _____, _____.
 Executed at (address) _____ in

_____ County at _____ o'clock _____.M., on the _____ day of _____,
 _____, by delivering to _____ **ATTACHED** defendant, in person, a
 true copy of this Citation together with the accompanying _____ copy(ies) of the Petition
 attached thereto and I endorsed on said copy of the Citation the date of delivery.
 To certify which I affix my hand officially this _____ day of _____.

FEE: \$ _____

_____ of _____ County, Texas

By _____

Affiant

Deputy

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return,

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____.

Notary Public

CAUSE NO. 201643681

ELIZONDO, RUBEN
Plaintiff

vs.

TRAVELERS INSURANCE AGENCY INC.
Defendant

S
S
S
S
S
IN THE 125th JUDICIAL DISTRICT

S
S
S
COURT OF HARRIS COUNTY, TEXAS

AFFIDAVIT OF SERVICE

My name is **DAVID DREILING**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am a private process server authorized by and through the Supreme Court of Texas, am in all ways competent to make this affidavit, and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is 309 S. Kealy Street, Lewisville, Texas 75057.

On July 12, 2016 at 10:00 A.M. - CITATION, PLAINTIFF'S ORIGINAL PETITION JURY DEMAND AND REQUEST FOR DISCLOSURE for delivery to **TRAVELERS INSURANCE AGENCY INC., BY DELIVERING TO ITS REGISTERED AGENT CT CORPORATION SYSTEM** at 1999 BRYAN STREET, SUITE 900, DALLAS, TEXAS 75201, came to hand.

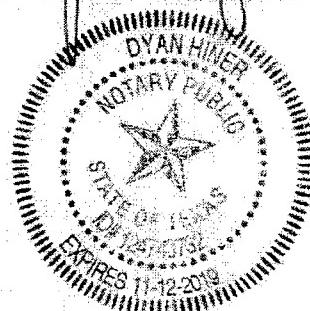
On July 12, 2016 at 3:46 P.M. - THE ABOVE NAMED DOCUMENTS WERE DELIVERED TO: TRAVELERS INSURANCE AGENCY INC., BY DELIVERING TO ITS REGISTERED AGENT CT CORPORATION SYSTEM, accepted by Terri Thongsavat, Intake Specialist at 1999 BRYAN STREET, SUITE 900, DALLAS, DALLAS COUNTY, TEXAS 75201, by personal service.

FURTHER AFFIANT SAYETH NOT.

DAVID DREILING, Affiant
ID: SCH000010402 expires: 07/31/2016

Before me personally appeared the above-named affiant, who, being first duly sworn, stated upon oath that the above-stated facts are true and correct and within his or her personal knowledge, and subscribed the same on this 29 day of July, 2016.

Notary Public In and For the State of Texas



Jul 14 2016 10:05:49 12127430617

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Nor-3-15 MetLife

Page 004



**Service of Process
Transmittal**

07/12/2016

CT Log Number 529492524

TO: Tracey Gilliam, Chief Counsel of Litigation
Metropolitan Life Insurance Company
1095 Avenue of the Americas
New York, NY 10036-6796

RE: **Process Served in Texas**

FOR: The Travelers Insurance Company (Former Name) (Domestic State: CT)
MetLife Insurance Company USA (True Name)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

| | |
|------------------------------------|--|
| TITLE OF ACTION: | RUBEN ELIZONDO, Pltf. vs. Travelers Insurance Agency Inc, Dft. <i>Name discrepancy noted.</i> |
| DOCUMENT(S) SERVED: | Citation, Original Petition |
| COURT/AGENCY: | 125th Judicial District Court Harris County, TX Case # 201643681 |
| NATURE OF ACTION: | Insurance Litigation |
| ON WHOM PROCESS WAS SERVED: | C T Corporation System, Dallas, TX |
| DATE AND HOUR OF SERVICE: | By Process Server on 07/12/2016 at 15:40 |
| JURISDICTION SERVED : | Texas |
| APPEARANCE OR ANSWER DUE: | By 10:00 a.m. on the Monday next after the expiration of 20 days after you were served |
| ATTORNEY(S) / SENDER(S): | Mark A. Weycer The Weycer Law Firm, P.C. 4545 Bissonnet, Suite 294 Bellaire, TX 77401 713-668-4545 |
| ACTION ITEMS: | CT has retained the current log, Retain Date: 07/13/2016, Expected Purge Date: 07/18/2016 Image SOP Email Notification, CTServic eof Process litigationintake@metlife.com |
| SIGNED: | |
| ADDRESS: | C T Corporation System 1999 Bryan St Ste 900 Dallas, TX 75201-3140 |
| TELEPHONE: | 214-932-3601 |

Page 1 of 1 / DJ

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Jul 14 2016 10:06:25 12127430617

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Nor-3-15 MetLife

Page 006

6/28/2016 4:06:39 PM
Chris Daniel - District Clerk Harris County
Envelope No. 11381245
By: Nelson Cuero
Filed: 6/28/2016 4:06:39 PM

CAUSE NO.

RUBEN ELIZONDO
Plaintiff,

vs.

TRAVELERS INSURANCE
AGENCY, INC.
Defendants.

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND &
REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Ruben Elizondo complaining of Defendant, Travelers Insurance Agency, Inc., hereinafter referred to as Travelers, for cause of action would show as follows:

INTRODUCTION

1. This is a civil action brought on behalf of Plaintiff. This action seeks monetary compensation for the personal injuries and damages caused by the negligence of Defendants Travelers.

DISCOVERY CONTROL PLAN

2 Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff states that discovery in this case is intended to be conducted under Level 2. The monetary damages of this case exceed \$200,000.00.

REQUEST FOR DISCLOSURE

3. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose within fifty (50) days of service of this request, the information or material described in Rule 194.2.

2016-43681 / Court: 125

PARTIES

4. Plaintiff is an individual residing in Harris County, Texas.
5. Defendant, Travelers Insurance Agency, Inc., is an insurance company registered and doing business within the State of Texas at all times material herein. Defendant Travelers may be served with process herein by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201 or wherever they may be found.

JURISDICTION AND VENUE

6. Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code §15.001 because all or a part of Plaintiff's causes of action occurred in Harris County, Texas.

FACTS OF AUTO COLLISION

7. On July 12, 2013, at the 900 block of El Dorado Blvd., Plaintiff was seriously injured in a motor vehicle collision involving Sunil Reddy Tetali.
8. The collision occurred when Plaintiff stopped for traffic and was rear ended by the Sunil Reddy Tetali.
9. As a direct and/or proximate result of the collision, Plaintiff was caused to suffer bodily injuries and to incur substantial damages.

CAUSE OF ACTION FOR NEGLIGENCE

10. Plaintiff incorporates herein all preceding paragraphs.
11. Sunil Reddy Tetali had a duty to exercise ordinary care and operate his vehicle as a reasonable and prudent person would have acted under the same or similar circumstances.
12. Sunil Reddy Tetali breached his duty in one or more respects including, but not limited to:
 - a) failing to maintain a proper lookout;

- b) failing to control the speed of his vehicle;
- c) driver inattention;
- d) failing to properly apply his brakes; and
- e) failing to maintain an assured clear distance from the vehicle in front.

13. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

NEGLIGENCE PER SE OF SUNIL REDDY TETALI

14. In accordance with S45.062 of the Transportation Code, an operator shall, if following another vehicle, maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the condition of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

15. Negligence per se is a common-law doctrine in which a duty is imposed based on a standard of conduct created by a penal statute. The evidence will show:

- a. Plaintiff belongs to the class of persons the statute was designed to protect and his injury is of the type the statute was designed to prevent;
- b. The statute is one for which tort liability may be imposed when violated;
- c. Sunil Reddy Tetali violated the statute without excuse; and
- d. Sunil Reddy Tetali's act or omission proximately caused Plaintiff's injury.

16. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

DAMAGES

17. As a direct and proximate result of the wrongful acts and/or omissions of the

Sunil Reddy Tetali, Plaintiff has suffered damages above the minimum jurisdictional requirements of this Court, including but not limited to the following:

- a. Physical pain in the past and future;
- b. Mental anguish in the past and future;
- c. Physical impairment in the past and future;
- d. Medical expenses in the past and future;
- e. Loss of earning capacity in the past and future;

18. Plaintiff's damages at the time of the filing of this petition are in excess of the minimum jurisdictional limits of this Court.

FACTS OF UIM CLAIM

19. The above referenced accident and resulting damages were caused by an underinsured driver. Plaintiff's injuries and damages will exceed Sunil Reddy Tetali's insurance policy. However, Plaintiff was driving a work vehicle for Nova Healthcare Management which was covered by an underinsured motorist policy POBA-3A593871 with Defendant Travelers. The policy provides coverage for Plaintiff in the event he sustains damages in a collision caused by a motorist who is underinsured.

20. Under the underinsured motorist policy with Defendant Travelers, Plaintiff is entitled to recover his damages, up to the policy limits, for injuries sustained from the auto collision with the at fault motorist. Defendant Travelers's refusal to pay Plaintiff's reasonable damages is a breach of the insurance policy with the company.

BREACH OF CONTRACT

21. The evidence in this case will establish that Defendant Travelers has a contractual obligation to pay Plaintiff for the damages he incurred in the collisions made the basis of this

suit. Despite receipt of evidence confirming Plaintiff's injuries and damages, Defendant Travelers has failed to comply with the contract between the parties and is therefore liable for breach of contract.

DECLARATORY JUDGMENT

22. Based on the foregoing facts, and pursuant to the policy of insurance in force and effect and covering Plaintiff and by Defendant Travelers at the time of the collision, Plaintiff seeks a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code Ch. 37 that he is entitled to recover from Defendant Travelers his damages resulting from the motor vehicle collision which is the subject of this suit, that those damages fall within the coverage afforded him under the policy with Defendant Travelers, and specifying the amount of damages, attorneys' fees, interest, and court costs that Defendant TRAVELERS is obligated to pay.

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

23. The evidence in this case establishes that Defendant Travelers breached its duty to act in good faith and fairly deal with Plaintiff in that Defendant Travelers has no reasonable basis for refusing to pay under the Underinsured Motorist protection coverage. As a consequence, Defendant Travelers is liable for actual damages, punitive damages and other relief as pled for in this petition.

LIABILITY UNDER TEXAS INSURANCE CODE

24. Defendant Travelers's failure to attempt to effectuate a prompt, fair and equitable settlement with respect to which its liability has become reasonably clear and its failure to promptly pay the claim violates Texas Insurance Code §§ 541.060 and 542.051 et seq. Plaintiff has been trying to resolve this claim with Defendant Travelers's since July of 2015.

DAMAGES

25. Defendant Travelers's conduct is a proximate and producing cause of damages to Plaintiff. Such damages include, but are not limited to, unpaid benefits, medical expenses, and lost wages. Such damages have occurred in the past and are likely to continue in the future. Plaintiff is also entitled to statutory damages.

ATTORNEYS' FEES

26. As a result of Defendant Travelers's conduct, Plaintiff has incurred attorneys' fees through trial and appeal, if any.

DEMAND FOR JURY TRIAL

27. Plaintiff demands a trial by jury on all of his claims.

PRAYER

28. Plaintiff prays that Defendant Travclers be cited to appear and answer and that upon final hearing he recovers judgment against the Defendant Travelers for the following:

- a. All actual damages proximately resulting from Defendant's negligent acts and/or omissions;
- b. Costs of court;
- c. Prejudgment and post judgment interest at the maximum rate allowed by law; and
- d. All damages recoverable pursuant to all statutes cited herein, including, but not limited to treble damages;
- e. Reasonable attorneys' fees;
- f. Declaratory relief as outlined in the petition;
- g. For such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Jul 14 2016 10:08:00 12127430617

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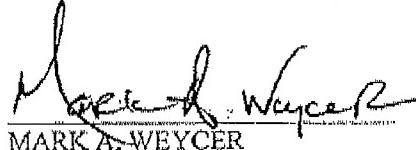
Nor-3-15 MetLife

Page 012

Respectfully submitted,

THE WEYKER LAW FIRM, P.C.

By:



MARK A. WEYKER
State Bar No. 21237300
ALYSSA SCHAFFER
State Bar No. 24027813
4545 Bissonnet, Suite 294
Bellaire, Texas 77401
Tele: (713) 668-4545
Fax: (713) 668-5115
mweyker@weykerlawfirm.com
aschaffer@weykerlawfirm.com

ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED RUBEN ELIZONDO V. TRAVELERS INSURANCE AGENCY, INC.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

| | | | |
|--|-------------------------------------|---|--|
| 1. Contact information for person completing case information sheet: | | Names of parties in case: | Person or entity completing sheet is: |
| Name: Mark A. Weycer | Email: mweycer@weycerlawfirm.com | Plaintiff(s)/Petitioner(s): Ruben Elizondo | <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ |
| Address: 4545 Bissonnet, Suite 294 | Telephone: 713-668-4545 | Defendant(s)/Respondent(s): | Additional Parties in Child Support Case: |
| City/State/Zip: Houston, Texas 77401 | Fax: 713-668-5115 | Travelers Insurance Agency, Inc. | Custodial Parent: |
| State Bar No: 21237300 | | | Non-Custodial Parent: |
| | | | Presumed Father: |
| [Attach additional page as necessary to list all parties] | | | |

2. Indicate case type, or identify the most important issue in the case (select only 1):

Chris Daniel - District Clerk

6/28/2016 4:06:39 PM

| Civil | | | Family Law | |
|---|--|---|---|--|
| Debt/Contract By: CUEFRO NELSON Filed: 6/28/2016 4:06:39PM | Injury or Damage | Real Property | Marriage Relationship | Post-judgment Actions (non-Title IV-D) |
| <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: <input type="checkbox"/> | <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage: | <input type="checkbox"/> Eminent Domain/ Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: <input type="checkbox"/> | <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <input type="checkbox"/> Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children | <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <input type="checkbox"/> Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order |
| | | Related to Criminal Matters | Other Family Law | Parent-Child Relationship |
| | | <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____ |
| Employment | Other Civil | | | |
| <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: <input type="checkbox"/> | <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____ | | |
| Tax | Probate & Mental Health | | | |
| <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax | <input type="checkbox"/> Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings | | <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____ | |

3. Indicate procedure or remedy, if applicable (may select more than 1):

| | | |
|---|---|---|
| <input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action | <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment | <input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover |
| 4. Indicate damages sought (do not select if it is a family law case): | | |

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees |
| <input type="checkbox"/> | Less than \$100,000 and non-monetary relief |
| <input type="checkbox"/> | Over \$100, 000 but not more than \$200,000 |
| <input checked="" type="checkbox"/> | Over \$200,000 but not more than \$1,000,000 |
| <input type="checkbox"/> | Over \$1,000,000 |

Rev 2/13

CIVIL PROCESS REQUEST FORM

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: _____

CURRENT COURT: _____

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Original Petition _____

FILE DATE OF MOTION: June 28, 2016

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Travelers Insurance Agency., Inc.

ADDRESS: 1999 Bryan Street, Suite 900, Dallas, Texas 75201

AGENT, (if applicable): CT Corporation System

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

- ATTORNEY PICK-UP CONSTABLE
 CIVIL PROCESS SERVER -Scopic Legal Process/Tim Soublet 832-660-4602
 MAIL CERTIFIED MAIL

PUBLICATION:

Type of Publication: COURTHOUSE DOOR, or
 NEWSPAPER OF YOUR CHOICE: _____

 OTHER, explain _____

ATTENTION: Effective June1, 2010

For all Services Provided by the DISTRCT CLERKS OFFICE requiring our office to MAIL something back to the Requesting Party, we require that the Requesting Party provide a Self-Addressed Stamped Envelope with sufficient postage for mail back. Thanks you,

2. NAME:

ADDRESS:

AGENT, (if applicable):

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type):

SERVICE BY (check one):

- ATTORNEY PICK-UP CONSTABLE
 CIVIL PROCESS SERVER-
 MAIL CERTIFIED MAIL

PUBLICATION:

Type of Publication: COURTHOUSE DOOR, or
 NEWSPAPER OF YOUR CHOICE: _____

 OTHER, explain _____

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: Mark A. Weycer TEXAS BAR NO./ID NO. 21237300

MAILING ADDRESS: 4545 Bissonnet, Suite 294, Bellaire, Texas 77401

PHONE NUMBER: 713 _____ 668-4545 _____ FAX NUMBER: 713 _____ 668-5115 _____
area code phone number area code fax number

EMAIL ADDRESS: mweycer@weycerlawfirm.com



CHRIS DANIEL
HARRIS COUNTY DISTRICT CLERK

ENTERED _____
VERIFIED WL

Civil Process Pick-Up Form

CAUSE NUMBER: 2016 43681

ATTY _____

CIV /

COURT 125

REQUESTING ATTORNEY/FIRM NOTIFICATION

*ATTORNEY REQUESTING: Mark A. Weycer ATTY. PHONE #: 713 668 4545

*CIVIL PROCESS SERVER (CIV): Scopic Legal Process BOX: 174

*CIV PHONE NUMBER: 832 660 4602

*PERSON NOTIFIED SVC READY: Tim Soublet

* NOTIFIED BY: Nelson Cuero

DATE: 6/28/16

Type of Service Document: CITR Tracking Number 73261722

Process papers prepared by: Nelson Cuero

Date: Tuesday, June 28, 2016

30 days waiting 07 - 28 - 16

*Process papers released to:

TJS sublet
(PRINT NAME)

650-4602
(CONTACT NUMBER)

[Signature]
(SIGNATURE)

*Process papers released by:

Iris Collins
(PRINT NAME)

IrisCollins
(SIGNATURE)

* Date:

7/8

, 2016

Time:

8 AM / PM

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

7/22/2016 10:46:07 AM
Chris Daniel - District Clerk Harris County
Envelope No. 11773642
By: bradley darnell
Filed: 7/22/2016 10:46:07 AM

CAUSE NO. 2016-43681

RUBEN ELIZONDO § IN THE DISTRICT COURT OF
Plaintiff, §
§ HARRIS COUNTY, TEXAS
vs. §
§
TRAVELERS INSURANCE §
AGENCY, INC. §
Defendants. § 125th JUDICIAL DISTRICT

**PLAINTIFF'S FIRST AMENDED PETITION, JURY DEMAND &
REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Ruben Elizondo complaining of Defendant, Travelers Insurance Agency, Inc., hereinafter referred to as Travelers, and Defendant The Charter Oak Fire Insurance Company, hereinafter referred to as Charter, for cause of action would show as follows:

INTRODUCTION

1. This is a civil action brought on behalf of Plaintiff. This action seeks monetary compensation for the personal injuries and damages caused by the negligence of Defendants Travelers and Charter.

DISCOVERY CONTROL PLAN

2 Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff states that discovery in this case is intended to be conducted under Level 2. The monetary damages of this case exceed \$200,000.00.

REQUEST FOR DISCLOSURE

3. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose within fifty (50) days of service of this request, the information or material described

in Rule 194.2.

PARTIES

4. Plaintiff is an individual residing in Harris County, Texas.

5. Defendant, Travelers Insurance Agency, Inc., is an insurance company registered and doing business within the State of Texas at all times material herein. Defendant Travelers may be served with process herein by serving its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201 or wherever they may be found.

6. Defendant, The Charter Oak Fire Insurance Company, is an insurance company registered and doing business within the State of Texas at all times material herein. Defendant Charter's attorney, Bruce Gaible, has agreed to appear and answer on behalf of Defendant Charter without the need for formal service.

JURISDICTION AND VENUE

7. Venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code §15.001 because all or a part of Plaintiff's causes of action occurred in Harris County, Texas.

FACTS OF AUTO COLLISION

8. On July 12, 2013, at the 900 block of El Dorado Blvd., Plaintiff was seriously injured in a motor vehicle collision involving Sunil Reddy Tetali.

9. The collision occurred when Plaintiff stopped for traffic and was rear ended by the Sunil Reddy Tetali.

10. As a direct and/or proximate result of the collision, Plaintiff was caused to suffer bodily injuries and to incur substantial damages.

CAUSE OF ACTION FOR NEGLIGENCE

11. Plaintiff incorporates herein all preceding paragraphs.

12. Sunil Reddy Tetali had a duty to exercise ordinary care and operate his vehicle as a reasonable and prudent person would have acted under the same or similar circumstances.

13. Sunil Reddy Tetali breached his duty in one or more respects including, but not limited to:

- a) failing to maintain a proper lookout;
- b) failing to control the speed of his vehicle;
- c) driver inattention;
- d) failing to properly apply his brakes; and
- e) failing to maintain an assured clear distance from the vehicle in front.

14. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

NEGLIGENCE PER SE OF SUNIL REDDY TETALI

15. In accordance with 545.062 of the Transportation Code, an operator shall, if following another vehicle, maintain an assured clear distance between the two vehicles so that, considering the speed of the vehicles, traffic, and the condition of the highway, the operator can safely stop without colliding with the preceding vehicle or veering into another vehicle, object, or person on or near the highway.

16. Negligence per se is a common-law doctrine in which a duty is imposed based on a standard of conduct created by a penal statute. The evidence will show:

- a. Plaintiff belongs to the class of persons the statute was designed to protect and his injury is of the type the statute was designed to prevent;
- b. The statute is one for which tort liability may be imposed when violated;
- c. Sunil Reddy Tetali violated the statute without excuse; and
- d. Sunil Reddy Tetali's act or omission proximately caused Plaintiff's injury.

17. The above acts and/or omissions were a proximate cause of the collision and plaintiff's resulting injuries and damages.

DAMAGES

18. As a direct and proximate result of the wrongful acts and/or omissions of the Sunil Reddy Tetali, Plaintiff has suffered damages above the minimum jurisdictional requirements of this Court, including but not limited to the following:

- a. Physical pain in the past and future;
- b. Mental anguish in the past and future;
- c. Physical impairment in the past and future;
- d. Medical expenses in the past and future;
- e. Loss of earning capacity in the past and future;

19. Plaintiff's damages at the time of the filing of this petition are in excess of the minimum jurisdictional limits of this Court.

FACTS OF UIM CLAIM

20. The above referenced accident and resulting damages were caused by an underinsured driver. Plaintiff's injuries and damages will exceed Sunil Reddy Tetali's insurance policy. However, Plaintiff was driving a work vehicle for Nova Healthcare Management which was covered by an underinsured motorist policy POBA-3A593871 with Defendant Travelers. The policy provides coverage for Plaintiff in the event he sustains damages in a collision caused by a motorist who is underinsured.

21. Under the underinsured motorist policy with Defendant Charter, Plaintiff is entitled to recover his damages, up to the policy limits, for injuries sustained from the auto collision with the at fault motorist. Defendant Charter's refusal to pay Plaintiff's reasonable damages is a breach

of the insurance policy with the company.

BREACH OF CONTRACT

22. The evidence in this case will establish that Defendant Charter has a contractual obligation to pay Plaintiff for the damages he incurred in the collisions made the basis of this suit. Despite receipt of evidence confirming Plaintiff's injuries and damages, Defendant Charter has failed to comply with the contract between the parties and is therefore liable for breach of contract.

DECLARATORY JUDGMENT

23. Based on the foregoing facts, and pursuant to the policy of insurance in force and effect and covering Plaintiff and by Defendant Charter at the time of the collision, Plaintiff seeks a declaratory judgment pursuant to Tex. Civ. Prac. & Rem. Code Ch. 37 that he is entitled to recover from Defendant Charter his damages resulting from the motor vehicle collision which is the subject of this suit, that those damages fall within the coverage afforded him under the policy with Defendant Charter, and specifying the amount of damages, attorneys' fees, interest, and court costs that Defendant Charter is obligated to pay.

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

24. The evidence in this case establishes that Defendant Charter breached its duty to act in good faith and fairly deal with Plaintiff in that Defendant Charter has no reasonable basis for refusing to pay under the Underinsured Motorist protection coverage. As a consequence, Defendant Charter is liable for actual damages, punitive damages and other relief as pled for in this petition.

LIABILITY UNDER TEXAS INSURANCE CODE

25. Defendant Charter's failure to attempt to effectuate a prompt, fair and equitable

settlement with respect to which its liability has become reasonably clear and its failure to promptly pay the claim violates Texas Insurance Code §§ 541.060 and 542.051 et seq. Plaintiff has been trying to resolve this claim with Defendant Charter's since July of 2015.

DAMAGES

26. Defendant Charter's conduct is a proximate and producing cause of damages to Plaintiff. Such damages include, but are not limited to, unpaid benefits, medical expenses, and lost wages. Such damages have occurred in the past and are likely to continue in the future. Plaintiff is also entitled to statutory damages.

ATTORNEYS' FEES

27. As a result of Defendant Charter's conduct, Plaintiff has incurred attorneys' fees through trial and appeal, if any.

DEMAND FOR JURY TRIAL

28. Plaintiff demands a trial by jury on all of his claims.

PRAYER

29. Plaintiff prays that Defendant Charter be cited to appear and answer and that upon final hearing he recovers judgment against the Defendant Travelers for the following:

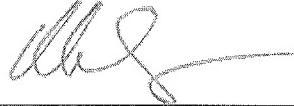
- a. All actual damages proximately resulting from Defendant's negligent acts and/or omissions;
- b. Costs of court;
- c. Prejudgment and post judgment interest at the maximum rate allowed by law; and
- d. All damages recoverable pursuant to all statutes cited herein, including, but not limited to treble damages;

- e. Reasonable attorneys' fees;
- f. Declaratory relief as outlined in the petition;
- g. For such other and further relief, both general and special, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

THE WEYCER LAW FIRM, P.C.

By:



MARK A. WEYCER
State Bar No. 21237300
ALYSSA SCHAFER
State Bar No. 24027813
4545 Bissonnet, Suite 294
Bellaire, Texas 77401
Tele: (713) 668-4545
Fax: (713) 668-5115
mweycer@weycerlawfirm.com
aschaffer@weycerlawfirm.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on July 22, 2016, I served a copy of the foregoing instrument on the party listed below via facsimile and/or email as noted:

Bruce Gaible
1233 West Loop South, Suite 1000
Houston, Texas 77027
(713) 650-0027 Fax
Bruce.Gaible@leclariryan.com



MARK A. WEYCER

CAUSE NO. 2016-43681**RUBEN ELIZONDO****v.****TRAVELERS INSURANCE AGENCY,
INC.****§ IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
§
§ 125th JUDICIAL DISTRICT****DEFENDANT THE CHARTER OAK FIRE INSURANCE COMPANY'S
ORIGINAL ANSWER****TO THE HONORABLE JUDGE OF SAID COURT:****COMES NOW Defendant THE CHARTER OAK FIRE INSURANCE COMPANY**

and for its Answer to Plaintiff's First Amended Petition on file herein, would respectfully show unto the Court as follows:

I.

Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Defendant generally denies each and every, all and singular, the allegations in Plaintiff's First Amended Petition.

II.

Defendant demands and requests a trial by jury. A jury fee has been paid.

III.

Defendant reserves the right to amend this pleading as it is its right pursuant to the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant **THE CHARTER OAK FIRE INSURANCE COMPANY** having fully answered herein, pray that the Court enter a take-nothing judgment in its favor, and for such other and further relief, both special and general, to which it may be justly entitled.

Respectfully submitted,

LECLAIRRYAN

/s/ Bruce C. Gaible

By: _____

Bruce C. Gaible
State Bar No. 07567400
1233 West Loop South, Suite 1000
Houston, Texas 77027
Telephone: (713) 654-1111
Facsimile: (713) 650-0027
Email: bruce.gaible@leclairryan.com

**ATTORNEY FOR DEFENDANT,
THE CHARTER OAK FIRE INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record on this the 22nd of July, 2016.

Mark A. Weycer
Alyssa Schaffer
The Weycer Law Firm, P.C.
4545 Bissonnet, Suite 294
Bellaire, Texas 77401

Via E-Serve

/s/ Bruce C. Gaible

BRUCE C. GAIBLE

CAUSE NO. 2016-43681

RUBEN ELIZONDO

v.

TRAVELERS INSURANCE AGENCY,
INC.§ IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
§
§ 125th JUDICIAL DISTRICT**DEFENDANT THE CHARTER OAK FIRE INSURANCE COMPANY'S
RULE 216 REQUEST FOR JURY TRIAL**

TO THE HONORABLE JUDGE OF THE COURT:

In accordance with the provisions of Rule 216 of the Texas Rules of Civil Procedure, Defendant, **THE CHARTER OAK FIRE INSURANCE COMPANY**, requests that when this case proceeds to trial, it be placed on the Court's jury trial docket.

The appropriate jury fee is tendered herewith.

Respectfully submitted,

LECLAIRRYAN

/s/ Bruce C. Gaible

By: _____

Bruce C. Gaible
State Bar No. 07567400
1233 West Loop South, Suite 1000
Houston, Texas 77027
Telephone: (713) 654-1111
Facsimile: (713) 650-0027
Email: bruce.gaible@leclairryan.com

**ATTORNEY FOR DEFENDANT,
THE CHARTER OAK FIRE INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing document has been served on all counsel of record on this the 22nd day of July, 2016.

Mark A. Weycer
Alyssa Schaffer
The Weycer Law Firm, P.C.
4545 Bissonnet, Suite 294
Bellaire, Texas 77401

Via E-Serve

/s/ Bruce C. Gaible

BRUCE C. GAIBLE

CAUSE NO. 2016-43681

| | | |
|-------------------------------------|---|---|
| RUBEN ELIZONDO | § | IN THE DISTRICT COURT OF |
| Plaintiff, | § | |
| | § | |
| Vs. | § | HARRIS COUNTY, TEXAS |
| | § | |
| TRAVELERS INSURANCE | § | |
| AGENCY, INC. and THE CHARTER | § | |
| OAK FIRE INSURNACE COMPANY | § | |
| Defendants. | § | 125th JUDICIAL DISTRICT |

**PLAINTIFF'S MOTION FOR NON-SUIT WITHOUT PREJUDICE AS TO
TRAVELERS INSURANCE AGENCY, INC.**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Ruben Elizondo, and files this, his Motion for Non-Suit without Prejudice as to Defendant, Travelers Insurance Agency, Inc. As grounds therefore, Plaintiff, Ruben Elizondo would respectfully show as follows:

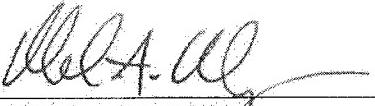
I.

Plaintiff, Ruben Elizondo has not assigned any of his rights in this matter to any third-party for further prosecution. Plaintiff no longer desires to prosecute this cause of action as to Defendant, Travelers Insurance Agency, Inc. and requests leave of Court to take a non-suit without prejudice against Defendant, Travelers Insurance Agency, Inc. Plaintiff's claim as to Defendant The Charter Oak Fire Insurance Company will remain ongoing.

Respectfully submitted,

THE WEYKER LAW FIRM, P.C.

By:



MARK A. WEYKER
State Bar No. 21237300
ALYSSA SCHAFER
State Bar No. 24027813
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Fax: (713) 668-5115
mweyker@weykerlawfirm.com
aschaffer@weykerlawfirm.com

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on July 22, 2016, I served a copy of the foregoing instrument on the party listed below via facsimile and/or email as noted:

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1233 West Loop South, Suite 1000
Houston, Texas 77027
(713) 650-0027 Fax
Bruce.Gaible@leclariryan.com



MARK A. WEYKER

CAUSE NO. 2016-43681

RUBEN ELIZONDO
Plaintiff,

VS.

**TRAVELERS INSURANCE
AGENCY, INC. and THE CHARTER
OAK FIRE INSURNACE COMPANY
Defendants.**

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

ORDER GRANTING NON-SUIT WITHOUT PREJUDICE

On this day the court considered Plaintiff, Ruben Elizondo's Motion for Non-Suit without Prejudice as to Defendant, Travelers Insurance Agency, Inc. and finds that Plaintiff, Ruben Elizondo, no longer wishes to prosecute this suit against Defendant, Travelers Insurance Agency, Inc.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that the Motion for Non-Suit without Prejudice filed by Plaintiff, Ruben Elizondo, is in all things GRANTED.

The case asserted by Plaintiff, Ruben Elizondo, against Defendant, Travelers Insurance Agency, Inc. is DISMISSED without prejudice and the case as to Defendant The Charter Oak Fire Insurance Company will remain ongoing.

Signed this the _____ day of _____, 2016.

JUDGE PRESIDING

CAUSE NO. 2016-43681

4A

RUBEN ELIZONDO
Plaintiff,

vs.

TRAVELERS INSURANCE
AGENCY, INC. and THE CHARTER
OAK FIRE INSURNACE COMPANY
Defendants.

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

125th JUDICIAL DISTRICT

ORDER GRANTING NON-SUIT WITHOUT PREJUDICE

7/22/2016 2:26:26 PM
Chris Daniel - District Clerk
Harris County
Envelope No: 11781944
BY: TORRES, MELISSA D
Filed: 7/22/2016 2:26:26 PM

On this day the court considered Plaintiff, Ruben Elizondo's Motion for Non-Suit without Prejudice as to Defendant, Travelers Insurance Agency, Inc. and finds that Plaintiff, Ruben Elizondo, no longer wishes to prosecute this suit against Defendant, Travelers Insurance Agency, Inc.

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that the Motion for Non-Suit without Prejudice filed by Plaintiff, Ruben Elizondo, is in all things GRANTED.

The case asserted by Plaintiff, Ruben Elizondo, against Defendant, Travelers Insurance Agency, Inc. is DISMISSED without prejudice and the case as to Defendant The Charter Oak Fire Insurance Company will remain ongoing.

Signed this the _____ day of _____, 2016.

Signed:
7/25/2016

JUDGE PRESIDING